under this section. *In re Harper*, 175 Fed. 412; *In re Gay*, 182 Fed. 260. So, of an action for malicious attachment of property: *Hansen* v. *Wyman & Partridge Co.*, 105 Minn. 491, 117 N. W. 926. The right to revest one's self with property, held as security for a usurious loan, seems equally to be in protection of property. The principal case, however, took the view that the right under the usury statute was personal to the borrower, following previous, decisions. *Wheelock* v. *Lee*, 64 N. Y. 242; *In re Fishel*, 198 Fed. 464. However the trustee in bankruptcy of the borrower may to some extent avail himself of the usury statutes. He may use the defense of usury to defeat a claim against the estate. *In re Kellogg*, 121 Fed. 333; *Broach* v. *Mullis*, 228 Fed. 551. He may recover usurious interest paid. *Reed* v. *National Bank*, 155 Fed. 233; *Wheelock* v. *Lee*, *supra*. He may recover a penalty to which the lender is liable. *Tamplin* v. *Wentworth*, 99 Mass. 63; *First National Bank* v. *Lasater*, 196 U. S. 115. Furthermore, the property in the pledge will pass to the trustee subject only to the creditor's lien. *Rode & Horn* v. *Phipps*, 195 Fed. 414. And normally a creditor would have no standing to rely on a lien obtained by a usurious contract. *Thompson* v. *Van Vechten*, 27 N. Y. 568; *Vickery* v. *Dickson*, 35 Barb. 96. The result of the principal case is undesirable since it enables the bankrupt, by pledging property to a usurious creditor, to prevent it from going to his legitimate creditors unless the trustee in bankruptcy pays the usurious creditor in full.

CONFLICT OF LAWS — CONCURRENT JURISDICTION — RULE OF FEDERAL COURTS AS TO BURDEN OF PROOF APPLIED IN AN ACTION IN A STATE COURT UNDER A FEDERAL STATUTE. — In an action in a state court based on the federal Employers' Liability Act, the question was presented whether the rule of the state court or that of the federal court regarding the burden of proof on the issue of assumption of risk should govern (35 STAT. 65). *Held*, that the federal rule should be applied. *Crugley* v. *Grand Trunk Ry. Co.*, 108 Atl. 293 (N. H.).

State courts of general jurisdiction must take cognizance of an action to enforce a right of recovery arising under the federal Employers' Liability Act. *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1. In such an action in a state court, the decisions of the federal courts as to the construction of the statute are binding. *Southern Ry. Co.* v. *Gray*, 241 U. S. 333. As to matters of procedure, the law of the forum governs. *Ches. & Ohio Ry. Co.* v. *Kelley's Adm'x*, 161 Ky. 655, 171 S. W. 185; *Bombolis* v. *Minn., etc. R. Co.*, 128 Minn. 112, 150 N. W. 385; *St. Louis, etc. R. Co.* v. *Brown*, 45 Okla. 143, 144 Pac. 1075. The question of who has the burden of proof of an issue is ordinarily one of procedure. *Duggan* v. *Bay State St. Ry. Co.*, 230 Mass. 370, 119 N. E. 757; *Sackheim* v. *Pigueron*, 215 N. Y. 62, 109 N. E. 109; *So. Ind. Ry. Co.* v. *Peyton*, 157 Ind. 690, 61 N. E. 722. But a statute which creates a cause of action may impose limitations on it which become a part of the substantive right, although apart from the statute they would be remedial only. *Phillips* v. *Grand Trunk Ry.*, 236 U. S. 662; *Partee* v. *St. Louis, etc. Co.*, 204 Fed. 970; *Wheatland* v. *Boston*, 202 Mass. 258, 88 N. E. 769. The United States Supreme Court has ruled that the statute in question makes the burden of proof a part of the substantive right. *Central Vt. R. R.* v. *White*, 238 U. S. 507. Since the state court is bound by this construction of the statute, the decision in the principal case follows logically.

CONSTITUTIONAL LAW — DUE PROCESS — REGULATION OF PRICES. — The Montana legislature passed an act giving a commission power to supervise the charges made for all commodities sold within the state, and to establish maximum prices or a reasonable margin of profit; the act made provision for court review of any prices claimed to be unreasonable or unjustly discriminatory.

(1919, MONTANA SESSION LAWS SIXTEENTH LEGISLATIVE ASSEMBLY, EXTRAORDINARY SESSION, c. 21). An injunction was asked against the enforcement of the act. *Held*, that the act is unconstitutional. *Holter Hardware Co.* v. *Boyle*, the District Court of the United States for the District of Montana, No. 149 (January, 1920).

For a discussion of this case, see NOTES, p. 838, *supra*.

CONSTRUCTIVE TRUSTS — MISTAKE OF FACT — MONEY LOANED IN IGNORANCE OF THE PREVIOUS INSTITUTION OF BANKRUPTCY PROCEEDINGS AGAINST THE BORROWER. — The defendant was appointed receiver in bankruptcy for a debtor. The next day the plaintiff loaned the debtor £1000, neither party knowing of the receiving order. The money came to the hands of the defendant, and the plaintiff applied for an order requiring the defendant to return the money. *Held*, that the order be made. *Re Thellusson*, 122 L. T. R. 35 (Court of Appeal).

It is occasionally asserted that the courts will require court officers to act strictly in accordance with honesty and fairness irrespective of the obligations of private litigants in similar circumstances. *Ex parte James*, 9 Chan. App. 609; *Ex parte Simmonds*, 16 Q. B. D. 308; *Gillig* v. *Grant*, 23 App. Div. 596, 49 N. Y. Supp. 78. Thus court officers are not allowed to take advantage of the anomalous rule that money paid under a mistake of law cannot be recovered. See 32 HARV. L. REV. 283. Under the influence of this line of thought, the court in the principal case avoided a discussion of the rights of the parties. But it would seem that this reasoning assumes the point at issue, for surely the receiver should not be held to an ethical standard inconsistent with the rights of the creditors whom he represents. However, as between the creditors and the plaintiff, the latter is entitled to the money. For money paid under a mistake of fact becomes subject to a constructive trust and can be followed as long as it can be identified into the hands of all but a *bona fide* purchaser. *In re Berry et al*, 147 Fed. 208. See 3 POMEROY, EQ. JURIS., 4 ed., §§ 1047, 1048.

It is true that ordinarily a man's financial condition is an extrinsic fact, ignorance of which is no ground for equitable relief. *Dambmann* v. *Schulting*, 75 N. Y. 55; *In re Hunter-Rand Co.*, 241 Fed. 175. But in the principal case the mistake involved more than the risk of insolvency assumed in every transaction. By the provisions of the English Bankruptcy Act the plaintiff's claim against the debtor is postponed until all the debtor's assets have been applied to claims existing at the date of the receiving order. See ACT 4 & 5 GEO. V., c. 59, § 30. The question is one of degree. See WILLISTON, SALES, § 656. It is submitted that equity should allow recovery to prevent a gratuitous addition, at the plaintiff's expense, to the fund available to creditors.

CORPORATIONS — LIABILITY OF STOCKHOLDER UPON SUBSCRIPTION-CALLS — WHETHER DATE OF PAYMENT NECESSARY FOR VALIDITY OF RESOLUTION FOR A CALL. — The plaintiff corporation sued the defendant stockholder to recover the amount of a call made in respect of the defendant's shares. The defense was that the resolution of the board of directors for the call fixed no date upon which it should be payable. *Held*, that the action be dismissed. *Canadian Motor Sales Corp., Ltd.* v. *Wilson*, [1920], 1 W. W. R. 282 (Saskatchewan).

In the English cases, upon the authority of which the court rested its decision, either the articles of association or a statute required the resolution to specify the date of payment of the call. *In re Cawley & Co.*, 42 Ch. D. 209; *Johnson* v. *Lyttle's Iron Agency*, 5 Ch. D. 687. But in the principal case there was no intimation that such a provision was contained in any statute, in the articles of association, or in the subscription agreement. The doctrine propounded, therefore, seems to be that a resolution for a call is invalid, as a